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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re A.Z. et al., Persons Coming Under the
Juvenile Court Law.

FRESNO COUNTY DEPARTMENT OF
SOCIAL SERVICES,

Plaintiff and Respondent,

v.

GUADALUPE Z.,

Defendant and Appellant.

F077874

(Super. Ct. Nos. 15CEJ300218)

OPINION

APPEAL from a judgment of the Superior Court of Fresno County. James Petrucelli, Judge.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County Counsel, for Plaintiff and Respondent.

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Guadalupe Z. (mother) has three sons, now 18-year-old Jose Z., 11-year-old Osvaldo Z. and four-year-old Jose Z., Jr. (Junior)¹ and four daughters, 16-year-old A.Z., nine-year-old J.Z., six-year-old Arianna Z. and one-year-old Hope Z. In July 2018, the juvenile court terminated her parental rights to J.Z., Arianna and Junior at a hearing under Welfare and Institutions Code section 366.26² and ordered the three older children into a long-term plan of foster care.³ Hope remained in mother's custody under the court's jurisdiction. Mother appeals from the termination order of her parental rights to J.Z., Arianna and Junior. She contends the court erred in not applying the beneficial parent-child and sibling relationship exceptions to adoption (§ 366.26, subd. (c)(1)(B)(i) & (v)) and in denying her request for a bonding study. She also contends the attorney who represented the children had a disqualifying conflict of interest. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in August 2015 when the Fresno County Department of Social Services (department) removed then 15-year-old Jose, 12-year-old A.Z., seven-year-old Osvaldo, five-year-old J.Z., three-year-old Arianna, and 13-month-old Junior from mother's custody because she was using methamphetamine and leaving the children with her elderly parents up to several weeks at a time. Mother, then 34 years old, had been using methamphetamine intermittently since the age of 16. Her longest period of sobriety was for five years between 2010 to 2015. The department placed the children together in foster care.

The juvenile court detained the children and ordered the department to offer mother services, including a substance abuse evaluation, and supervised visitation. In

¹ He was commonly referred to as "Junior."

² Statutory references are to the Welfare and Institutions Code unless otherwise designated.

³ Jose turned 18 during the pendency of the July 2018 hearing, prompting the setting of a hearing in January 2019 to review his nonminor dependent status.

September 2015, she began residential drug treatment at WestCare California, Inc. She consistently visited the children and was affectionate and loving toward them.

The juvenile court exercised its dependency jurisdiction over the children in November 2015 and ordered mother to participate in reunification services, including substance abuse treatment.⁴ The court ordered the department to immediately begin unsupervised visits at WestCare and granted it discretion to advance to liberal visitation. By that time, the children were placed in three foster homes, in groups of two: Jose and Osvaldo (ages 15 and seven); A.Z. and Junior (ages 12 and 16 months) and J.Z. and Arianna (ages six and three).

On January 23, 2016, mother began liberal visits with all her children at WestCare. Five days later, she tested positive for methamphetamine. WestCare extended her treatment for an additional 90 days and the juvenile court reinstated supervised visitation. Mother tested positive for methamphetamine again in early March but denied using the drug. She tested the following day with negative results. On March 24, mother entered Fresno First, another residential treatment program, and the juvenile court ordered her to submit to hair follicle testing to resolve the inconsistencies in her drug test results. The results were negative.

In May 2016, at the six-month review hearing, the juvenile court continued mother's reunification services and ordered the department to resume unsupervised visitation. In June, mother completed residential drug treatment and enrolled in aftercare. By August, she had progressed to liberal visits.

On October 3, 2016, the juvenile court granted a modification petition (§ 388, subd. (a)(1)) filed by the department, requesting reinstatement of supervised visitation after mother allowed Jose to drive her and the children to a party without a license or driving permit and allowed A.Z. and Jose to smoke a "hookah pen." The court granted

⁴ The juvenile court denied reunification services to the fathers of the children.

the department discretion to advance to unsupervised, liberal and extended visits. Not long after, A.Z. cut the palms of her hands after having a “flashback” of mother. She explained to her foster mother she was overwhelmed about “stuff” from her past.

In January 2017, following a combined 12- and 18-month review hearing, the juvenile court returned Jose, Osvaldo, J.Z. and Arianna to mother’s custody with family maintenance services and continued reunification services for A.Z. and Junior to July 2017.

In mid-January 2017, mother stopped drug testing. Within a month, she had nine “no shows” and the department had information she relapsed and was using methamphetamine. Mother denied relapsing and claimed a year of sobriety. She submitted to hair follicle analysis with negative results and continued to miss drug tests throughout March and April.

In May 2017, mother tested positive for methamphetamine at high levels after the social worker transported her to the drug testing facility. The social worker took Jose, Osvaldo, J.Z. and Arianna into protective custody and filed a supplemental petition (§ 387) alleging family maintenance services had proven ineffective. The department placed Jose and Osvaldo together in a foster home and J.Z. and Arianna with A.Z. and Junior.

In July 2017, mother entered Spirit of Woman’s residential substance abuse treatment program.

The juvenile court sustained the supplemental petition and denied mother further reunification services as to Jose, Osvaldo, J.Z. and Arianna at a dispositional hearing in September 2017. At the same hearing, the court conducted a 24-month review of services as to A.Z. and Junior and terminated them. The court set a section 366.26

hearing for January 2018.⁵ Mother, then 10 days from completing drug treatment, was dropped from Spirit of Woman for inability to pay.

In January 2018, mother gave birth to Hope. The department removed Hope from mother's custody but returned her in February by court order. Mother completed a substance abuse evaluation and no treatment was recommended. She enrolled in random drug testing and tested negative.

In March 2018, mother's attorney filed a modification petition requesting the juvenile court vacate the section 366.26 hearing and return the children to mother's custody. As changed circumstances, counsel cited mother's immediate return to treatment following her relapse. Counsel indicated the parties did not agree with the request, though for different reasons and expressed concern the minors may have conflicting positions. She did not ask the court to appoint separate counsel but stated the children "may need separate counsel appointed as well." The juvenile court set a hearing on mother's modification petition to coincide with the section 366.26 hearing (combined hearing). The combined hearing was conducted in July 2018.

Meanwhile, the department opposed mother's modification petition, citing her failure to maintain sobriety. It also recommended the juvenile court terminate mother's parental rights and proceed with adoption planning for J.Z., Arianna and Junior. Though mother consistently visited the children she had not demonstrated she could adequately parent them. In addition, the children were considered adoptable, not having any developmental, physical or emotional problems, and the prospective adoptive parents were committed to adopting them. The children were also attached to the adoptive parents who they called "mom" and "dad" and expressed their wish to remain with them. J.Z. and Arianna stated they loved mother but were afraid to live with her. J.Z. asked her

⁵ Mother challenged the juvenile court's setting order by extraordinary writ petition (Cal. Rules of Court, rules 8.450–8.452), which we denied. (*Guadalupe Z. v. Superior Court* (Jan. 2, 2018, F076370) [nonpub. opn.])

adoptive mother to go with her if she had to return to mother's care. Junior, when asked if he wanted to live with his "mommy Guadalupe" stated, "no, no, this is my mommy," pointing to his adoptive mother. The children were also extremely close to each other and almost inseparable. They played with the same toys and watched the same cartoons. Junior cried if his sisters left him and they all wanted to know the whereabouts of the others if they were gone for too long. The adoptive parents also recognized the importance of heritage and were willing to communicate with the birth family as long as it was safe, appropriate, and in the children's best interests. They had not, however, entered into a postadoption contact agreement.

The department recommended continued foster care for the three older siblings with a permanent goal of relative placement. None of them wanted to be adopted and Jose and Osvaldo planned to live with mother when they turned 18. Jose and Osvaldo did not have an opinion about the adoption of their younger siblings. When asked, they shrugged their shoulders and did not respond. They did not talk to the social worker or their foster parents about their younger siblings. A.Z. supported the adoption.

In an addendum report prepared in May 2018, the department notified the juvenile court that Jose ran away from his foster home on April 24, 2018. On April 30, he was placed in a group home after his foster parents gave notice. They found a cell phone in his room with messages from mother indicating she knew he was going to run away. She instructed him not to go to her house, stating "This is the first place they will come looking." She also told him to lie to the foster parent and say he was texting a friend. Their text messages also indicated she had unauthorized contact with him at school where she gave him money and electronic devices. Despite being warned about unauthorized contact, mother continued to contact Jose after he was moved to the group home.

In June 2018, minors' counsel filed a trial brief, arguing for termination of mother's parental rights. Counsel concurred J.Z., Arianna and Junior were likely to be adopted and that neither the beneficial parent-child or sibling relationship exceptions to

adoption applied. Taking that position, she asserted, did not create a conflict of interest in her continued representation of the minors.

The juvenile court conducted the combined hearing over several days in July 2018. A single attorney represented the minors and the issue of whether that presented a conflict was not raised. Mother testified she relapsed in May 2017 because her father's death was imminent, and she was very close to him. However, she immediately abstained from drug use and two months later entered Spirit of Woman and remained clean and sober. After the court terminated her reunification services in September 2017, she completed three more parenting classes and a trauma class and participated in a support group. She was more serious this time about recovery and obtained a sponsor. She was also more willing to ask for help when she needed it. In addition, she responded better to emotionally-charged situations that previously triggered her drug use. As an example, her father died in June 2017 and she did not relapse. She admitted having unauthorized contact with Jose but denied going to his school without the department's knowledge.

Social worker Luisa Morfin testified mother was being drug tested as part of her reunification services for Hope. Other than a positive result for opiates, which mother was prescribed, her test results were negative. Mother was cooperative with the department and Morfin believed Hope was safe in mother's care. A hearing was scheduled in that case within the week and the department was recommending the juvenile court order family maintenance services.

Erica Flitcraft, a substance abuse specialist for the department, performed mother's most recent substance abuse evaluation and did not recommend any treatment. She confirmed mother's results were negative for all drugs tested except for opiates.

Mother's sister, Maria Lemus, and her parent partner, Zenaida Machuka, observed positive changes in mother's behavior. Machuka testified mother was quick to sign up for classes and support groups and was completely compliant.

The children, with the exception of then four-year-old Junior, testified about their relationships with mother and their siblings. Eighteen-year-old Jose said he loved his mother and his siblings. He wanted to return to mother's custody and would be sad if he could not see J.Z., Arianna and Junior. He felt close to them and did not think adoption was a good idea because the adoptive parents could decide if he saw them again. Ten-year-old Osvaldo expressed love for mother who he believed was a "good mom" and wanted to return to her custody. He also loved his siblings and would be sad if he could not see them. Hope was his favorite although he felt close to J.Z. and Arianna. He believed he and his siblings should be living with mother. Eight-year-old J.Z. testified she enjoyed living with her adoptive mother, Arianna and Junior. She also loved and missed mother and wanted to live with her and her siblings. She believed mother was a "good mom" because she took care of them and did everything for them. She enjoyed visiting mother and would feel sad if she never saw her or her siblings again. She remembered saying she was afraid to go home to mother. She was still afraid but did not know why. She didn't know how to choose between mother and her adoptive mother. Five-year-old Arianna said she would like to live with mother who she considered the "best mom" because she brought them pizza and food from McDonalds. She believed she and her siblings should all live together. She would feel "bad" if she could not see mother or her siblings again with the exception of A.Z. who hit her. Fifteen-year-old A.Z. did not want to return to mother's custody but would consider visitation. She described life with mother as a "nightmare" because she was not there most of the time and when she was she beat her. A.Z. loved J.Z., Arianna and Junior and believed they had the strongest relationship of the siblings.

Following testimony, minors' counsel argued the department met its burden of proving that J.Z., Arianna and Junior were adoptable, but that mother failed to show terminating her parental rights would be detrimental to them. Alluding to the beneficial parent-child relationship exception to adoption, counsel argued mother did not occupy a

parental role for the children. Further, though the siblings testified they would be sad, there was no evidence terminating parental rights would substantially interfere with the sibling relationships such that it would be detrimental to J.Z., Arianna and Junior. Counsel pointed out that the prospective adoptive parents intended to foster those relationships.

The juvenile court denied mother's section 388 petition, finding she failed to show there had been a change of circumstances and the children's best interests warranted returning them to her custody. The court also terminated her parental rights to the three younger children, finding they were likely to be adopted. The court also found mother "ha[d] not met any exceptions." It stated, "I do not believe that she has shown that there is a beneficial parental relationship or that it would be in the children's best interest as it relates to the termination of parental rights and [it] certainly has been shown there would be a detriment to the children to have them returned." The court ordered the three older children into long-term foster care.

DISCUSSION

I. Beneficial Parent-Child Relationship Exception to Adoption

“ ‘Once reunification services are ordered terminated, the focus shifts to the needs of the child for permanency and stability.’ [Citation.] ‘A section 366.26 hearing ... is a hearing specifically designed to select and implement a permanent plan for the child.’ [Citation.] It is designed to protect children's ‘compelling rights ... to have a placement that is stable, permanent, and that allows the caretaker to make a full emotional commitment to the child.’ [Citation.] ‘The Legislature has declared that California has an interest in providing stable, permanent homes for children who have been removed from parental custody and for whom reunification efforts with their parents have been unsuccessful.’ [Citation.]” (*In re Celine R.* (2003) 31 Cal.4th 45, 52–53.)

Section 366.26 governs the proceedings at which the juvenile court must select a permanent placement for a dependent child. The express purpose of a section 366.26

hearing is “to provide stable, permanent homes” for dependent children. (§ 366.26, subd. (b).) If the court determines it is likely the child will be adopted, the statute mandates termination of parental rights unless the parent opposing termination can demonstrate that one of the statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B).) “Moreover, ‘[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.’ [Citation.]” (*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646.)

Mother contends the exception found in section 366.26, subdivision (c)(1)(B)(i), i.e., the beneficial parent-child relationship exception, applies in this case. The beneficial parent-child relationship exception pertains where the evidence supports “a compelling reason for determining that termination would be detrimental to the child [because the parent maintained] ... [¶] ... regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) “ ‘To trigger the application of the parental relationship exception, the parent must show the parent-child relationship is sufficiently strong that the child would suffer detriment from its termination.’ [Citation.] A beneficial relationship ‘is one that “promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.” ’ ” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643.)

The nature of the relationship between the parent and child is key in determining the existence of a beneficial parent-child relationship; it is not sufficient to show that the child derives some benefit from the relationship or shares some “ ‘emotional bond’ ” with the parent. (*In re K.P.* (2012) 203 Cal.App.4th 614, 621.) “To meet the burden of proving the section 366.26, subdivision (c)(1)(B)(i) exception[,] the parent must show more than frequent and loving contact, an emotional bond with the child, or pleasant

visits—the parent must show that he or she occupies a parental role in the life of the child.” (*In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.)

“To overcome the preference for adoption and avoid termination of the natural parent’s rights, the parent must show that severing the natural parent-child relationship would deprive the child of a *substantial*, positive emotional attachment such that the child would be *greatly* harmed.” (*In re Angel B.* (2002) 97 Cal.App.4th 454, 466.) The juvenile court’s decision that a parent has not satisfied this burden may be based on either or both of two component determinations—whether a beneficial parental relationship exists and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B).)

When the juvenile court finds the parent has not met his or her burden of producing evidence establishing the existence of the beneficial parent-child relationship, our review is limited to determining whether the evidence compels a finding in favor of the parent on this issue as a matter of law. (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528; *In re Breanna S.*, *supra*, 8 Cal.App.5th 636, 647.)⁶ “When the juvenile court concludes the benefit to the child derived from preserving parental rights is not sufficiently compelling to outweigh the benefit achieved by the permanency of adoption, we review that determination for abuse of discretion.” (*In re Breanna S.*, at p. 647; see *In re K.P.*, *supra*, 203 Cal.App.4th at pp. 621–622.)

Here, there was no dispute mother maintained regular visitation and contact with the children. However, she did not present any evidence she occupied a parental role

⁶ Though some appellate courts apply the substantial evidence test to a determination that a parent has not satisfied his or her burden of proof on the existence of one of the exceptions to adoption, it is more properly reviewed, as in all failure-of-proof cases, for “whether the evidence compels a finding in favor of the appellant as a matter of law.” (*In re I.W.*, *supra*, 180 Cal.App.4th at p. 1528.)

with respect to them. They were very young when removed from her custody; five, three and 13 months of age in August 2015. In the three years that followed, they were in foster care except for four months beginning in January 2017 when J.Z. and Arianna were returned to her under family maintenance. Junior never returned to her custody. Consequently, by the section 366.26 hearing, they had spent a significant portion of their formative years in the care of others and were strongly attached to the adoptive parents whom they regarded as their “mom” and “dad.” Further, though they enjoyed visits with mother and were sad at the prospect of not seeing her, nothing in the evidence mother cites, or in the record as a whole, compels a conclusion a beneficial parent-child relationship existed between mother and the children as a matter of law. Nor was the juvenile court’s termination order an abuse of discretion. Even assuming there was sufficient detriment to trigger the exception, the benefit of adoption outweighed the benefit of maintaining the parent-child relationship. The children were well cared for and loved in a stable environment and there was no prospect they would be returned to mother even if her relationship with them was not terminated.

II. Sibling Relationship Exception to Adoption

The sibling relationship exception to adoption applies when adoption would result in a “substantial interference with a child’s sibling relationship.” (§ 366.26, subd. (c)(1)(B)(v).) To avoid termination of parental rights, the parents have the burden to show “the existence of a significant sibling relationship, the severance of which would be detrimental to the child.” (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 952, fn. omitted.) The statute directs courts to “tak[e] into consideration the nature and extent of the relationship, including, but not limited to, whether the child was raised with a sibling in the same home, whether the child shared significant common experiences or has existing close and strong bonds with a sibling, and whether ongoing contact is in the child’s best interest, including the child’s long-term emotional interest, as compared to the benefit of legal permanence through adoption.” (§ 366.26, subd. (c)(1)(B)(v).) The purpose of this

exception is to preserve long-standing sibling relationships that “serve as anchors for dependent children whose lives are in turmoil.” (*In re Erik P.* (2002) 104 Cal.App.4th 395, 404.)

Although the sibling relationship exception concerns the sibling relationship in general, it requires the juvenile court to determine whether adoption would be detrimental to the child being adopted, not the siblings. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 54.) The exception creates a heavy burden for the party opposing adoption. (*In re Daniel H.* (2002) 99 Cal.App.4th 804, 813.) And the likelihood a child’s relationship with his or her siblings would be sufficiently strong to outweigh the benefits of adoption is rare, especially if the adoptive child is young. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1014.)

If the juvenile court finds that termination of parental rights will substantially interfere with a child’s sibling relationships, it must “weigh the child’s best interest in continuing that sibling relationship against the benefit the child would receive by the permanency of adoption.” (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 952.)

Here, the children were very young in August 2015 when they were removed from mother’s custody. By the time of the July 2018 hearing, they had been separated from their siblings for over three years. Though they maintained a weekly visitation schedule during that time of separation, mother has not shown that severing the sibling relationship would cause the children detriment. By all accounts they were adjusting well to their adoptive parents and most strongly bonded to each other. The juvenile court’s finding the sibling relationship exception did not apply can be affirmed on mother’s failure to show detriment alone.⁷

⁷ Mother contends there is no evidence the juvenile court considered the sibling relationship exception much less found it did not apply because it did not expressly address it. She is correct to a point; the court specifically mentioned the beneficial parent-child relationship only. However, counsel briefed and argued the sibling relationship exception and the court stated mother had not met “any exceptions.” A

Further, there is no reason to believe that terminating mother's parental rights would substantially interfere with the sibling relationships. The adoptive parents understood the value of those relationships and indicated a willingness to preserve them through visitation. However, even if they were not willing, the court's decision to terminate parental rights was not an abuse of discretion. Despite any relationship the children had with their siblings, the benefit of adoption outweighed the benefit of maintaining those relationships.

III. Conflict of Interest

“When first appointing counsel in a dependency matter, the court may generally appoint a single attorney to represent all the siblings. It would have to appoint separate attorneys if, but only if, there is an actual conflict among the siblings or if circumstances specific to the case—not just the potential for conflict that inheres in all multisibling dependency cases—present a reasonable likelihood an actual conflict will arise. If these specific circumstances exist, the court should appoint separate counsel at the outset rather than await an actual conflict and the possible disruption a later reappointment may cause. After the initial appointment, the court will have to relieve counsel from multiple representation if, but only if, an actual conflict arises.” (*In re Celine R.*, *supra*, 31 Cal.4th at p. 58.) “For an actual conflict to arise at the permanency planning stage, there must be a showing that the siblings have different interests that would require their attorney to advocate a course of action for one child which has adverse consequences to the other. Standing alone, the fact that siblings have different permanent plans does not necessarily demonstrate an actual conflict of interest. [Citations.]” (*In re T.C.* (2010) 191 Cal.App.4th 1387, 1391.)

reasonable inference can be made the court considered and rejected the sibling relationship exception.

Mother contends there was an actual conflict because the children's testimony established that the beneficial parent-child and sibling relationship exceptions applied yet counsel argued the reverse. She asserts "counsel substituted her opinions and openly contradicted those of her clients." Specifically, she points to the children's testimony they loved her and wanted to go home to her and she was a good mother who "did everything" for them.

Assuming mother has standing to claim a conflict of interest,⁸ we conclude she forfeited the right to raise it on appeal by not bringing it to the attention of the juvenile court. Her attorney could have raised the issue of a conflict herself or raised it in response to the trial brief minors' counsel filed on the subject. However, she did neither. While we recognize forfeiture is not automatic, we are also cognizant that our discretion to consider forfeited claims should be exercised rarely and only in cases presenting an important legal issue. (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) Though matters concerning the well-being of children are always important, we are not compelled in this case to excuse the forfeiture.

Moreover, even if we were to reach the merits, the children's interests were not adversely affected by counsel's representation of their older siblings.⁹ Counsel

⁸ Parents have standing to assert the beneficial parent-child and sibling relationship exceptions to adoption because the determination of these exceptions directly affects the parent's interest in the relationship with the child. The parent is thus an aggrieved party in that determination. (*In re L.Y.L.*, *supra*, 101 Cal.App.4th at p. 951.) It stands to reason that if counsel, harboring under a conflict of interest, is ineffective in representing the interest of a child resulting in termination of parental rights, the parent has standing to object.

⁹ Mother's notice of appeal challenges the juvenile court's rulings with respect to a permanent plan as to J.Z., Arianna and Junior only. Consequently, she may only raise a claim counsel had a conflict of interest as to them. (See, e.g., *Dakota Payphone, LLC v. Alcaraz* (2011) 192 Cal.App.4th 493, 504 ["[j]urisdiction of the Court of Appeal is limited in scope to the notice of appeal and the judgment appealed from".]) In other words, mother cannot claim that the siblings' interests were adversely affected by counsel's representation of the children.

reasonably determined it was in the children's best interests to advocate for termination of parental rights and a permanent plan of adoption. The possibility this would be detrimental to their sibling relationship with the siblings did not create an actual conflict of interest requiring the appointment of separate counsel. The sibling relationship exception considers the effects on the children being freed for adoption, not their siblings. (*In re Celine R.*, *supra*, 31 Cal.4th at p. 54.) In other words, the court could only consider whether the children's interest in maintaining the relationship with their siblings outweighed their interest in the stability and permanence they would receive in an adoptive home. The court concluded it did not.

Finally, even assuming a conflict existed, failure to appoint separate counsel for the children is subject to harmless error analysis. The test is whether there is a reasonable probability that independent counsel would have made a difference in the outcome. (*In re Candida S.* (1992) 7 Cal.App.4th 1240, 1252–1254.) Here, mother failed to show as a matter of law that terminating her parental rights would be detrimental to the children under the beneficial parent-child or sibling exception to adoption. Consequently, it is not reasonably probable the juvenile court would have ordered a permanent plan for the children other than adoption. Accordingly, we reject mother's claim the children were denied effective assistance of counsel.

IV. Bonding Study

A bonding study is an expert opinion on the relationship between the parent and child or between siblings. Such a study is not required prior to termination of parental rights. (*In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1339.) The juvenile court is never required to appoint an expert when making a factual determination unless it determines "expert evidence is or may be required." (Evid. Code, § 730.) Thus, when there is extensive evidence in the record of the relationship between parent and child or between siblings, a bonding study is unnecessary. Absent a showing of clear abuse, the exercise of the court's discretion in granting or denying a request for a bonding study will not be

overturned. (*In re Stephanie M.* (1994) 7 Cal.4th 295 at pp. 318–319; *In re Lorenzo C.*, *supra*, 54 Cal.App.4th at p. 1339.)

As the court noted in *In re Richard C.* (1998) 68 Cal.App.4th 1191, there are practical reasons for the juvenile court to decline to order such expert advice:

“Bonding studies after the termination of reunification services would frequently require delays in permanency planning.... The Legislature did not contemplate such last-minute efforts to put off permanent placement. [Citation.] While it is not beyond the juvenile court’s discretion to order a bonding study late in the process under compelling circumstances, the denial of a belated request for such a study is fully consistent with the scheme of the dependency statutes, and with due process.” (*In re Richard C.*, *supra*, 68 Cal.App.4th at p. 1197.)

Mother’s attorney first requested a bonding study on January 8, 2018 at the first session of the section 366.26 hearing. She requested the study because the department was recommending termination of parental rights and she believed it necessary to assess the children’s bonds with mother and their siblings. The court denied the request, stating it was not necessary at that time. Mother’s counsel renewed her request for a bonding study on April 2, 2018 at the settlement conference. The court denied it again, stating:

“The Court does not believe that it would assist the Court at this time as the Court has fairly extensive reports and has gone over what the expected testimony is which includes the testimony of the children, the individuals who have observed the children both with the mother and the children with each other. And based on the reports and expected testimony, the Court will deny that at this time.”

Mother’s attorney requested a bonding study again on April 23, 2018, a week before the contested hearing on the section 366.26 hearing was originally scheduled to be heard. The court stated its position had not changed, adding “there is a relatively extensive history in this case and a lot of reports. The Court had previously found and continues to find that it would not assist the Court based on the information [it] currently

has.” The court granted counsel’s request to pay for a bonding study at her own expense if she could have it completed within two days, given the late request. The court clarified that it did not believe a bonding study was necessary and was not funding it but that mother could procure one at her own expense.

Mother contends the juvenile court’s refusal to order a bonding study at the State’s expense left her “without resources to defend her opposition and establish the exceptions to termination of parental rights” and undermined her due process right to competent counsel.

As a preliminary matter, we note that mother’s attorney had ample time from the date the juvenile court denied her request for a bonding study (April 23, 2018) until it conducted the section 366.26 hearing in July 2018 to appeal the court’s decision. Having failed to do so, she has forfeited the right to review. In any event, we find no abuse of discretion. The juvenile court had several years’ worth of visitation narratives with which to assess the children’s bond with mother and their siblings. In light of the extensive evidence already before it, the court did not abuse its discretion in denying the request for a bonding study.

DISPOSITION

The judgment is affirmed.

LEVY, J.

WE CONCUR:

HILL, P.J.

PEÑA, J.